

STATE OF MICHIGAN
COURT OF APPEALS

In re ROBERT MICHAEL DOBRZYKOWSKI,
III, Minor.

UNPUBLISHED
January 26, 2001

PAUL T. KILYANEK and DAWN M.
KILYANEK,

Petitioners-Appellants,

v

FAMILY INDEPENDENCE AGENCY,
MICHIGAN CHILDREN'S INSTITUTE,

Respondent.

No. 219108
Wayne Family Court
LC No. 98-074316-AD

Before: Saad, P.J., and Griffin and R.B. Burns,* JJ.

PER CURIAM.

Petitioners appeal as of right the dismissal of their petition for adoption of the minor, Robert Michael Dobrzykowski. The trial court dismissed the adoption petition after concluding that the adoption was not in the best interests of the child. We affirm.

Petitioners first complain that the trial court erred when it made factual findings and weighed the best interests of the child factors. We disagree.

We review the dismissal of an adoption petition for an abuse of discretion. *In re Kyung Won Kim*, 72 Mich App 85, 88; 249 NW2d 305 (1976).

“Our prior decisions sharply limit appellate review of a trial court’s valid exercise of discretion: ‘The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an “abuse” in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof,

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

not the exercise of reason but rather of passion or bias.” [Id., 89, quoting *Wendel v Swanberg*, 384 Mich 468, 475-476; 185 NW2d 348 (1971), quoting *Spalding v Spalding*, 355 Mich 382; 94 NW2d 810 (1959).]

In order to fulfill the goals of the Michigan Adoption Code¹, the trial court is required to consider the best interests of the child before granting a petition for adoption. MCL 710.51(1)(b); MSA 27.3178(555.51)(1)(b). The best interests of the child

means the sum total of the following factors to be considered, evaluated, and determined by the trial court to be applied to give the adoptee permanence at the earliest possible date:

- (i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39 of this chapter, the putative father and the adoptee.
- (ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial, identity, and culture of the adoptee.
- (iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

¹ The Michigan Adoption Code identifies its purposes as:

- (a) To provide that each adoptee in this state who needs adoption services receives those services.
- (b) To provide procedures and services which will safeguard and promote the best interests of each adoptee in need of adoption and which will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.
- (c) To provide prompt legal proceedings to ensure that the adoptee is free for adoptive placement at the earliest possible time. [MCL 710.21a; MSA 27.3178(555.21a).]

- (v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father.
- (vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father.
- (vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father, and of the adoptee.
- (viii) The home, school, and community record of the adoptee.
- (ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the trial court considers the adoptee to be of sufficient age to express a preference.
- (x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings.
- (xi) Any other factor considered by the trial court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody. [MCL 710.22(f); MSA 27.3178(555.22)(f).]

We are unable to conclude that the trial court abused its discretion when it dismissed the adoption petition. The trial court carefully considered each of the aforementioned statutory factors. Moreover, we find the trial court's conclusions are supported by the record. The evidence raised serious concerns regarding the mental health of both petitioners, petitioner Dawn Kilyanek's physical health and the ability of petitioners to meet the child's special needs. Indeed, as we stated in *In re Kyung Won Kim, supra*, 72 Mich App at 90:

We cannot say that in this case the judge's decision was violative of logic. In situations such as the one we are now faced with, some individuals will weigh and consider factors differently than others. The judge and the adoption worker felt one way, and the guardian ad litem another. We cannot say that the probate judge was devoid of reasoning merely because his prime considerations were different from those of plaintiff.

In sum, we find that the trial court's decision to dismiss the adoption petition was based on substantial evidence bearing on the best interests of the child and clearly was not an abuse of discretion.

Petitioners also allege that the trial court inappropriately relied on hearsay in reaching its decision. In particular, petitioners contend that the drug testing results, relied on by the trial court, were inadmissible hearsay. Petitioners did not object to the admission of this evidence and, therefore, failed to preserve this issue for appellate review. *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). More importantly, after the trial court's request, petitioners agreed to provide the trial court with the documentation containing the drug test results. Error warranting

reversal must be that of the trial court, and not error to which the aggrieved party contributed by plan or negligence. *Smith v Musgrave*, 372 Mich 329, 337; 125 NW2d 869 (1964). Petitioners' voluntary submission of the now challenged documents precludes this Court from granting the relief petitioners seek.

Further, petitioners complain that the trial court inappropriately relied on the complaints filed against them with the Methodist Children's Home Society and Orchards Children's Services. Petitioners argue that these complaints contained allegations that were unsubstantiated. Even if the complaints are excluded, there still remains sufficient evidence to support the trial court's decision to deny the adoption petition. In particular, as we previously noted, serious concerns were raised about the mental health of both petitioners, petitioner Dawn Kilyanek's physical health, as well as the ability of petitioners to meet the child's special needs. Petitioner Paul Kilyanek's lack of candor about his criminal history and anxiety disorder is also problematic. Together, these concerns justified the trial court's denial of the adoption petition.

Finally, petitioners argue that the trial court denied them the opportunity to present evidence. Yet, petitioners do not specifically identify what evidence they were precluded from presenting to the trial court. Absent such information, we are unable to determine whether petitioners sustained prejudice sufficient to warrant reversal. Accordingly, we deem the claimed error waived.

Affirmed.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Robert B. Burns